No. 85-1996

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

MELVIN K. FORSYTHE,

Petitioner,

vs.

JONES & LAUGHLIN STEEL CORPORATION, PROGRAM OF GROUP BENEFITS OF SALARIED EMPLOYEES OF JONES & LAUGHLIN STEEL CORPORATION and PARTICIPATING EMPLOYEES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Questions Presented

1. Did the United States District Court for the Western District of Pennsylvania commit reversible error by not considering Employee Retirement Income Security Act of 1974 (hereinafter "ERISA") Section 510, 29 USCA Section 1140 (prohibiting an employer from interfering with the attainment of any right to which an employee may become entitled) such that its ruling was so inconsistent in theory as to frustrate the intent and meaning of ERISA?

2. Did the United States Court of Appeals for the Third Circuit err when it failed to reverse the judgment of the trial court and failed to deny summary judgment for the Respondents?

List of Parties

The parties in the proceedings below were the petitioner, Melvin K. Forsythe and the respondents Jones & Laughlin Steel Corporation, Program of Group Benefits of Salaried Employees of Jones & Laughlin Steel Corporation and Participating Employees.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioner Melvin K. Forsythe respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in the above-entitled proceeding on March 6, 1986.

Opinions Below

The opinion of the Court of Appeals for the Third Circuit has not been reported. It is reprinted as appendix B hereto, pp. A18-A19, *infra*.

The memorandum decision of the United States District Court for the Western District of Pennsylvania (Block, D.J.) has not been reported. It is reprinted as appendix A hereto, pp. A1-A17, *infra*.

Jurisdiction

Invoking federal jurisdiction under 28 USCA Section 1331 and 29 USC Sections 1132(e) and (f), respondent filed a Petition for removal of this action to the United States District Court for the Western District of Pennsylvania to which petitioner consented. On July 17, 1985, the Western District granted respondent's motion for summary judgment against the petitioner.

On petitioner's appeal, the Third Circuit on March 6, 1986 entered a judgment order affirming the Western District's Order. No petition for rehearing was sought.

The jurisdiction of this court to review the judgment of the Third Circuit is involved under 28 USCA Section 1254(l).

Statute Involved

29 USCA Section 1140 interference with protected rights.

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act (29 U.S.C.A. sec. 301 et seq.), or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceedings relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

Statement of the Case

Petitioner, Melvin Forsythe, a salaried employee of Respondent, Jones & Laughlin Steel Corporation (hereinafter "J & L"), was covered by an employee benefit plan (hereinafter "the Plan") administered by J & L. The terms of the Plan are set forth in Summary Plan Description for Salaried Employees (hereinafter "SPD") which was given to Mr. Forsythe.

From November of 1981, Melvin Forsythe began suffering severe, continuous headaches which he reported from time to time to J & L personnel and which finally caused him to elect sick leave in March of 1982. While on sick leave, Mr. Forsythe sought medical attention. Melvin Forsythe was concerned about his position with J & L because the steel industry was engaging in extensive lay-offs. Although he continued to suffer severe headaches, Mr. Forsythe called the Personnel Manager at J & L. Mr. Forsythe told the Personnel Manager that he wanted to protect his job. The Personnel Manager told Mr. Forsythe he would see what he could do. When the Personnel Manager called Mr. Forsythe back, he told Mr. Forsythe to report to Jim Murray, the general foreman, on April 28, 1982. On April 28, 1982 when Mr. Forsythe reported to Mr. Murray, he was told that he was laid off for two years. Mr. Forsythe was then directed to see Lefty Mason in the Personnel Department for an exit interview. Mr. Forsythe's physical condition continued to worsen while he was laid off from work. On May 19, 1982, Mr. Forsythe suffered a stroke and was in an automobile accident. As a result of the accident, Mr. Forsythe has been and continues to be partially paralyzed and unable to work, and therefore totally disabled.

Mr. Forsythe applied for long-term disability benefits (hereinafter "LTD") under the terms of the Plan of J & L to Metropolitan Life Insurance Company. Metropolitan denied his claim on the grounds that his coverage ended on April 30, 1982, the date he was laid off by J & L.

Deanna Forsythe, Mr. Forsythe's wife, sent a letter to Metropolitan requesting review of her husband's claim. Metropolitan again denied his claim on the grounds that Mr. Forsythe was not entitled to LTD because his coverage ended on the date of his lay-off, April 30, 1982. Mr. Forsythe wrote a letter to the J & L Claim Appeal Committee (hereinafter "Committee") appealing the denial of his claim based on his wife's previous letter. After consideration of his claim as set forth in Mrs. Forsythe's previous letter, the Committee denied Mr. Forsythe's appeal.

On August 29, 1984 Petitioner, Mr. Forsythe, filed a Complaint in the Court of Common Pleas of Allegheny County, Pennsylvania, against J & L alleging entitlement to long-term disability benefits. On September 18, 1984 J & L filed a Petition for Removal of this action to the United States District Court for the Western District of Pennsylvania on the ground that the J & L LTD Plan is an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act (hereinafter "ERISA") 29 USCA Section 1001 *et seq.*, over which that court has jurisdiction pursuant to 29 USCA Section 1132(e) and (f); 28 USCA Section 1331. Petitioner consented to the removal.

Respondents and Petitioner filed Cross-Motions for Summary Judgment. On July 17, 1985 after reviewing the briefs and without a hearing, the District Court granted summary judgment against the Petitioner, Mr.

Forsythe on the basis that the Committee acted within its discretion in denying Petitioner his benefits. The District Court, however, did not consider whether the Employer's action frustrated the letter and intent of ERISA. Specifically, that J & L surreptitiously deprived Mr. Forsythe of benefits to which he was lawfully entitled. Petitioner appealed from the final judgment of the United States District Court for the Western District of Pennsylvania.

By Judgment Order without Opinion, the United States Court of Appeals for the Third Circuit affirmed the decision of the lower court. This Petition for Writ of Certiorari follows.

Reasons for Granting the Writ

There are several reasons why this Honorable Court should exercise its discretion and grant a Writ of Certiorari to review the decision of the United States Court for the Western District of Pennsylvania. First, without congressional authorization, the District Court has made a determination in an ERISA case contrary to the letter and intent of the statute as determined by numerous other decisions. Second, the District Court totally and shockingly disregarded important factual issues in determining that the trustees' decision in the present case was not arbitrary and capricious.

Private employee benefit plans affect the welfare of millions of workers and their families. The vast assets of such plans have a significant impact on the national economy. ERISA was signed into law to provide protection and guarantees for employees and their beneficiaries covered by the private employee pension and welfare plans. The Court in *Kross v. Westinghouse Electric Co.*, 701 F.2d 1238 (7th Cir. 1983) described ERISA as: "(A) remedial statute to be liberally construed in favor of the employee benefit fund participants." Thus, ERISA was implemented to protect the individual workers as against the employer.

A particular provision of ERISA that promotes this intention is Section 510, 29 USCA Section 1140.

This provision states:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against the participant or beneficiary for exercising any right to which he is entitled under the provisions of the employee benefit plan . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan . . .

Thus, if an employee is receiving benefits, his employer cannot interfere with the attainment of such rights. Specifically, this provision has been interpreted such that an employee cannot be laid off merely for the purpose of terminating benefits properly acquired under the benefit plan. *McClendon v. Continental Group, Inc.*, 602 F.Supp. 1492 (DC NJ 1985).

Since this case is governed by ERISA, this provision should have been taken into consideration because it is clear that J & L implemented a scheme that resulted in an interference of Petitioner, Mr. Forsythe's protected rights. Specifically, Mr. Forsythe was on sick leave, receiving salary continuance as of March, 1982. Mr. Forsythe told the Personnel Manager at J & L that he wanted to protect his position with J & L because the steel industry was engaging in extensive lay-offs. the Personnel Manager surreptitiously induced Mr. Forsythe to report to work on April 28, 1982 under the guise that he would be protecting his position. Rather than achieving this end, Mr. Forsythe was laid off as of April 30, 1982. Thus, the actual purpose of telling Mr. Forsythe to report to work was so he could be laid off and his benefits therefore would be eliminated. If J & L would have just laid off Mr. Forsythe without telling him to report to work, a blatant interference would have been apparent. Mr. Forsythe should never have been laid off in the first place. If Mr. Forsythe had not been lured into reporting on April 28, 1982, he would have remained on sick leave and would have received Salary Continuance Benefits and then Sickness and Accident Benefits, each for consecutive twenty-six week periods. At the end of the second twenty-six week period, a doctor would have examined Mr. Forsythe to determine whether he was eligible to receive LTD benefits.

The Committee that initially reviewed this case limited their consideration to the bald fact that Mr. Forsythe was laid off as of April 30, 1982. They did not look beyond the lay-off date to the surrounding facts and circumstances.

The standard of review is whether the Committee acted in an arbitrary and capricious manner. Under this standard, the reviewing court must determine; 1) Whether the trustee's decision is supported by substantial evidence and if so, then, 2) Whether they made an erroneous decision on a question of law. *Short v. Central States, Southeast and Southwest Areas Pension Fund,* 729 F.2d 567 (8th Cir. 1984).

In the case before this Honorable Court, the trustee's decision that Petitioner, Mr. Forsythe, was laid off as of April 30, 1982 is a matter of record. The propriety of such layoff, however, should have been examined. The full record before the trustee should have raised a question as to the propriety of Mr. Forsythe's lay-off. Clearly the trustee's decision was made without consideration of the entire record. Any reasonable person would have questioned the circumstances of Mr. Forsythe's lay-off. Specifically, an employee on sick leave who wants to protect his job and is told to report to work to protect his position and is immediately laid-off when he does report to work clearly cries out "impropriety". The fact that the trustee in this case did not question the circumstances emphatically reveals that this was an arbitrary and capricious act.

The decision of the District Court which destroyed the rights of this innocent employee should be reversed and Petitioner, Mr. Forsythe, should be allowed to proceed to trial on the merits. Summary Judgment is a drastic

remedy which should not be allowed to stand against this Petitioner. To allow summary judgment on these facts is clearly an insult to American Jurisprudence.

The Supreme Court of the United States is the Court of last resort to which the Petitioner can appeal for redress of his wrongs. He respectfully requests that this Honorable Court grant this Petition for Writ of Certiorari so that he may be protected in his rights and that he may have what is guaranteed to him by the Constitution of the United States; a trial on the merits and not be deprived of his rights by the surreptitious actions that were present in this case. The situation as it occurred in this case is contrary to any sense of fairness and justice. It is cases like these that destroy the American people's belief in justice. If this decision stands then nationally the ERISA Act intended to protect employees' rights is a mockery. Its intent and purpose as easily avoided by any sham that the Employer wishes to use—witness this very case.

We respectfully request that this Petitioner be given his day in court so that the public will know that under our system of American Jurisprudence, even though the small insignificant employee does not have J & L Steel Corporation's political clout, economic strength and financial backing, he still has the right to a fair hearing and a fair trial.

Conclusion

For these various reasons, this Petition for Certiorari should be granted.

Respectfully submitted,

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IN THE

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Respondent.

Certificate of Service

I, Louis M. Tarasi, Jr., a member of the Bar of this Court, hereby certify that on the 3rd day of June, 1986, three copies of the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to John C. Unkovic, Esquire, 435 Sixth Avenue, Pittsburgh, Pennsylvania 15219, counsel for the respondents herein: I further certify that all parties required to be served have been served.

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APPENDIX A

Memorandum Opinion and Order of the United States District Court for the Western District of Pennsylvania dated July 17, 1985.

Received Jul 18 1985

IN THE
UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania

MELVIN K. FORSYTHE,

Plaintiff,

vs.

JONES & LAUGHLIN STEEL CORPORATION and PROGRAM OF GROUP BENEFITS OF SALARIED EMPLOYEES OF JONES & LAUGHLIN STEEL CORPORATION AND PARTICIPATING EMPLOYERS,

Defendants.

Civil Action No. 84-2233.

MEMORANDUM OPINION

BLOCH, *District J.*

This action was originally filed in the Court of Common Pleas of Allegheny County, Pennsylvania, against defendant Jones & Laughlin Steel Corporation (J&L) alleging entitlement to long-term disability benefits. On September 18, 1984, J&L filed a petition for removal of this action to the United States District Court for the Western District of Pennsylvania on the

ground that the J&L long-term disability plan (LTD) is an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq.*, over which this Court has jurisdiction pursuant to 29 U.S.C. §1132(e) and (f); 28 U.S.C. §1331.[1] Plaintiff consented to the removal. (Docket entry No. 2). Presently before the Court are cross-motions for summary judgment. The parties agree that this action can be decided upon the basis of these motions. For the reasons that follow, plaintiff's motion is denied and defendants' motion is granted.

Under Fed. R. Civ. P. 56(c), summary judgment may be entered only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The Third Circuit has made clear that any doubt as to the existence of genuine issues of fact are to be resolved against the moving party. *Continental Ins. Co. v. Bodie*, 682 F.2d 436, 438 (3d Cir. 1982). Further, the facts and inferences to be drawn from the facts must be viewed in the light most favorable to the party opposing the motion. *Id.*

[1] This is a civil action brought by a participant in an employee benefit plan to recover benefits to which plaintiff is allegedly entitled to under the terms of the plan and/or to enforce his rights under ERISA and the terms of the plan within the meaning of 29 U.S.C. §1132(a)(1)(B) and (a)(3). J&L filed an answer in which it is alleged, *inter alia*, that an indispensable party, the ERISA plan, was not a party to the action. Subsequently, the Court granted plaintiff's motion to amend the complaint to add the Program of Group Benefits of Salaried Employees of Jones & Laughlin Steel Corporation and Participating Employers (the Plan) as a defendant. (Docket entry No. 20).

Appendix A—Memorandum Opinion and Order of the United States District Court for the Western District of Pennsylvania dated July 17, 1985.

Cross-motions for summary judgment are no more than a claim by each side that it alone is entitled to summary judgment. *Rains v. Cascade Industries, Inc.*, 402 F.2d 241, 245 (3d Cir. 1968). "[A] party moving for summary judgment concedes the absence of a factual issue and the truth of the non-moving party's allegations only for purposes of his own motion." 10A Wright, Miller and Kane, Federal Practice and Procedure §2720 at 20 (1983). If, however, there is no genuine factual issue and one or the other party is entitled to prevail as a matter of law, summary judgment is appropriate.

I. Facts

Plaintiff was employed by J&L from 1964 until he was laid off on April 28, 1982. Because of his layoff, plaintiff's salary ceased on April 30, 1982. On April 28, 1982, James Murray, the Superintendent of the Blast Furnace at J&L Aliquippa, told plaintiff that he was laid off and that recall to active work was unlikely. At that time, plaintiff was told that he would be given an interview by Benefit Personnel to explain his benefits.

On May 12, 1982, Wilfred Mason, Administrator of Insurance and Pension Benefits for J&L, conducted an "exit interview" with plaintiff. Mason explained that plaintiff could elect termination and apply for a severance allowance, or he could be placed on layoff status. Plaintiff elected to take layoff status. Mason explained that plaintiff would be paid salary through April 30, 1982. Further, plaintiff was entitled to receive money in lieu of vacation earned as of the preceding December but not yet taken. Affidavit of Wilfred Mason,

¶3-¶6 (docket entry No. 23). Plaintiff was also entitled to a vacation bonus of $60 for every week of vacation to which he was entitled. Affidavit of James Wilson, ¶6-¶7 (docket entry No. 23). Mr. Mason informed plaintiff that his vacation bonus would be paid as soon as practicable after May 31, 1982. Mason affidavit, ¶7.

On May 19, 1982, while driving home from a tavern, plaintiff was involved in a car accident resulting in serious injury. Defendants do not take issue with plaintiff's resultant disability.

On May 31, 1982, plaintiff received from J&L a check for his vacation pay in lieu of vacation. On June 30, 1982, plaintiff received from J&L a check for his vacation bonus.

On March 4, 1983, plaintiff filed a Statement of Claim for Long-Term Disability Benefits with Metropolitan Life Insurance Company, the administrator of J&L's LTD program. On May 3, 1983, Metropolitan sent plaintiff a letter notifying him that his claim was denied since his long-term disability coverage ended on the last day for which he received compensation, which was April 30, 1982. On June 28, 1982, plaintiff's wife sent a letter to Metropolitan requesting a review of her husband's claim. On July 26, 1982, Metropolitan replied to Mrs. Forsythe's request for a review and again explained that plaintiff was not entitled to long-term disability benefits because his coverage ended on April 30, 1982. Affidavit of David Carroll, Exhibits 2-5 (docket entry No. 23).

On August 7, 1983, plaintiff wrote a letter to the J&L Claim Appeal Committee (Committee) appealing the

denial of his claim. Exhibit 6. On December 21, 1983, the Committee met to consider various appeals, including that of plaintiff's. After considering plaintiff's claim, the Committee denied plaintiff's appeal as follows:

> RESOLVED, that the appeal to the Committee of Mrs. Melvin Forsythe, on behalf of her husband, for the denial of his claim for a long-term disability benefit hereby is denied, because there was not sufficient evidence that a disability existed prior to Mr. Forsythe's termination of employment and that plan provisions state that long-term disability coverage ends on the day salary ceases.

Exhibit 8. By letter dated February 12, 1984, this decision was communicated to plaintiff's counsel. Exhibit 9.

II. Standard of Review

The parties do not dispute that, as the administrator of the Plan, the Committee is a fiduciary within the meaning of ERISA, 29 U.S.C. §1002(21)(A).[2] *Offutt v. Prudential Insurance Co. of America*, 735 F.2d 948 (5th Cir. 1984). *See also Bickel v. Long-Term Disability Plan*

[2] A fiduciary is defined as follows: "Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan."

of Western Electric, 541 F. Supp. 685, 687 (E.D. Pa. 1982); *Rosenthal v. National Life Insurance Co.*, 486 F. Supp. 1018, 1022 (S.D.N.Y. 1980). A fiduciary is required to administer a plan solely in the interests of the participants and beneficiaries and shall discharge his duties with respect to the plan with the care, skill, prudence and diligence that a prudent man would use. See 29 U.S.C. §1104(a)(1)(A) and (B); *Morse v. Stanley*, 732 F.2d 1139, 1144-45 (2nd Cir. 1984).

A court may intervene in the administration of a plan, but should intervene only when the fiduciary transgresses his fiduciary duties by acting in an arbitrary and capricious manner. *Edwards v. Wilkes-Barre Publishing Company Pension Trust*, 757 F.2d 52, 56 (3d Cir. 1985); *Ganze v. Dart Industries, Inc.*, 741 F.2d 790, 792-93 (5th Cir. 1984); *Wardle v. Central States, Southeast and Southwest Areas Pension Fund*, 627 F.2d 820, 823-24 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); *Gordon v. ILWU-PMA Benefit Funds*, 616 F.2d 433, 439 (9th Cir. 1980). This standard prevents excessive judicial intervention in trust operations. *Rehmar v. Smith*, 555 F.2d 1362, 1371 (9th Cir. 1976). The arbitrary and capricious standard is to be applied as follows:

> Federal courts have applied the arbitrary and capricious standard both to ambiguous and unambiguous terms. A rational and reasonable interpretation of a plan may still be arbitrary and capricious if contrary to the plain meaning of the plan. "Where the trustees impose a standard not required by the pension plan itself, this court has

> stated that such action 'would result in an unwarranted and arbitrary construction of the plan. . . .' "
>
> * * *
>
> In *Bayles*, [*v. Central States, Southeast and Southwest Areas Pension Fund*, 602 F.2d 97 (5th Cir. 1979)] we indicated certain factors to be considered in applying the arbitrary and capricious standard: (1) uniformity of construction; (2) "fair reading" and reasonableness of that reading; and (3) unanticipated costs. . . . *The fact that a trustee's interpretation is not the correct one as determined by a District Court does not establish in itself arbitrary and capricious action, but is a factor in that determination.*

Ganze v. Dart Industries, Inc., supra, 741 F.2d at 793 (citations omitted) (emphasis in original).

III. Long-Term Disability Plan

The Committee held that under the terms of the Plan, plaintiff had no long-term disability coverage after his salary ceased due to layoff on April 30, 1982. Plaintiff contends that the last day for which he received compensation from J&L was June 30, 1982, and, therefore, under the terms of the Plan, plaintiff's coverage continued until that date.

The J&L Plan provides for a long-term disability insurance plan. If an eligible employee is still disabled upon the exhaustion of Sickness and Accident Plan

Benefits, the Plan will pay a benefit up to 60 percent of his or her monthly salary to a maximum of $4,000 per month. Summary Plan Description (SPD) at 68, 74-76 (docket entry No. 23). The Plan sets forth when long-term disability coverage terminates in a section entitled "Termination of coverage." That section provides as follows:

> WHEN COVERAGE ENDS.
> Your coverage under these Disability Benefit Plans continues until the earliest of the following occurs:
> —your employment with the Company ends, except as provided below;
> —you no longer meet the eligibility requirements because the period to time for continuation of coverage ends after ceasing work for reason of Disability, Layoff, Leave of Absence or Retirement (see below);
> —the Plans are terminated; or
> —you fail to make any contribution which may be required by the company under certain circumstances.
>
> * * *
>
> Layoff—If you cease work due to layoff, your coverage under the Salary Continuance, Sickness and Accident and LTD Plans ends on the last day for which you received compensation.

SPD at 76.

Defendants maintain that the term "compensation" has been consistently interpreted to mean the day salary ceases. In support, defendants submit the Plan and

several affidavits. The Plan includes a chart entitled "Termination of Coverage" that summarizes what happens to an employee's coverage if he ceases work due to layoff. With regard to long-term disability benefits, the chart provides that coverage ends on the "day salary ceases." SPD at 16-17.

Further, plaintiff was informed at the time of his exit interview on May 12, 1982, that his salary ceased on April 30, 1982, and that he had no long-term disability coverage while on layoff. Mason affidavit, Exhibit 1, ¶6.

Finally, the Committee's decision was consistent with its past interpretation and administration of the Plan. The Committee has never interpreted the Plan to permit the continuation of long-term disability coverage past the last day for which the employee is paid salary, and the Committee has never interpreted salary as including vacation bonuses or vacation pay in lieu of vacation. Affidavit of David Carroll, ¶17 (docket entry No. 23).

In opposition to defendants' motion and in support of his own motion, plaintiff maintains that the term "compensation," in the context of the Plan, encompasses the vacation payment and bonus that plaintiff received in May and June of 1982, since J&L's pay records for plaintiff include the May and June payments on its

salary payroll.[3] Further, even assuming that defendants' interpretation of compensation to mean salary is reasonable, defendants' exit interview report states as follows:

> c. Vacation earned as of the preceding December, but not yet taken will be included, if practicable, in the final salary payment.

---

[3] To the extent that plaintiff argues that state insurance law should be applied in determining whether the administrator properly interpreted the term "compensation," federal common law governs ERISA actions brought pursuant to 29 U.S.C. §1132(a)(1)(B) and (e)(1). *Menhorn v. Firestone Tire and Rubber Co.*, 738 F.2d 1496, 1500 (9th Cir. 1984) ("The courts are directed to formulate a national uniform federal common law to supplement the explicit provisions and general policies set out in ERISA, referring to and guided by principles of state law when appropriate, but governed by the federal policies at issue. To effectuate this purpose, Congress granted the federal courts jurisdiction, in part exclusive, in part concurrent with state courts, over the matters falling within ERISA's explicit provisions or this supplementary federal common law." *See Helms v. Monsanto Co., Inc.*, 728 F.2d 1416, 1419-1420 (11th Cir. 1984); *Jenkins v. Local 705 International Brotherhood of Teamsters*, 713 F.2d 247, 250 (7th Cir. 1983). Assuming *arguendo* that the Plan's terms are ambiguous, (which the Court does not find), the Court must determine whether the administrator's construction was arbitrary and capricious. If the Court were to hold that all employee benefit plans must be construed in favor of coverage, it would make the arbitrary and capricious standard of review meaningless. *See Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc.*, 637 F.2d 357, 362 (5th Cir.), *cert. denied*, 454 U.S. 836 (1981) ("Although the determination of eligibility for pension benefits seems to be a matter of contract law, the clear weight of federal authority mandates that the trustee's determinations of eligibility are to be upheld unless arbitrary and capricious." *Cf. McLaughlin v. Connecticut General Life Insurance Co.*, 565 F. Supp. 434 (N.D. Cal. 1983). Further, ERISA makes a clear distinction between ERISA plans and insurance contracts. 29 U.S.C. §1144(b)(2)(B).

NOTE: It must be made clear to the employee that he is being paid in lieu of vacation.

It further must be emphasized that for purposes of regular vacation eligibility he will not be considered to have met the December requirement of any calendar year if he is on layoff on that date and, accordingly, he will not be eligible to receive a vacation in the succeeding calendar year, subject to the following exception. If the employee who was on layoff for December returns to work in the succeeding calendar year and performs work after his return in that year, he will receive the vacation to which he would otherwise have been entitled in the succeeding calendar year except for his not having met the December requirement.

d. Vacation bonus will be paid to an employee on layoff as soon as practicable after May 31st.

Mason affidavit, Exhibit 1, p. 19 (docket entry No. 23).

The parties have submitted affidavits with supporting documents which establish that at the time of plaintiff's layoff, he had six days of vacation that had vested in December, 1981, but that had not been taken in 1982. Therefore, although plaintiff still remained on salary for six days after his layoff, after that time he was no longer on J&L's payroll. Affidavit of John J. Walsh in support of defendant's motion for summary judgment (docket entry No. 33); affidavit of Melvin K. Forsythe in support of plaintiff's motion for summary judgment (docket entry No. 34). The fact that plaintiff was paid for his vacation earned as of the preceding December but not

yet taken and his vacation bonus after April 30, 1982 does not alter the fact that, as of that date, the amount owed to plaintiff was fixed and determined. The date of the check is irrelevant and does not extend plaintiff's disability benefits. Based on the material before the Court, the decision of the Committee cannot be characterized as arbitrary or capricious. Its decision is clearly articulated and based upon the wording of the Plan itself. Further, the Plan's provision of benefits to employees while they are actively working was a reasonable interpretation of the Plan. *See Edwards v. Wilkes-Barre Publishing Co. Pension Trust, supra,* 757 F.2d at 57 ("The trustees' interpretation of the Plan is sensible, and is wholly faithful to the Plan's actual language, whatever may be said of the plausibility of appellant's alternative interpretation, 'is for the trustees, not the courts, to chose between two reasonable alternatives.' " (Citations omitted)).

IV. Successive Periods of Disability

Plaintiff alleges another ground for coverage. Plaintiff maintains that according to the language of the Plan, his two successive periods of unrelated disabilities are considered to be one continuing disability since he never returned to work for a full day in between the periods of disability. Thus, even if his coverage terminated on April 30, 1982, he is entitled to long-term disability benefits for his continued disability which began in March of 1982. The relevant portion of the Plan provides as follows:

Successive Periods of Disability.

If you suffer two or more periods of related disability within 13 weeks of each other, they will be considered one continuing disability.

The same is true for entirely unrelated disabilities, if you do not return to work for a full day in between the periods of disability.

On the other hand, if there are more than 13 weeks of full-time employment in between your periods of related disability, or if two periods of disability are unrelated but separated by at least one day of active work, each disability will be treated separately. Before you begin to receive LTD benefits for the second period of disability, you must have exhausted your Salary Continuance and Sickness and Accident Plan benefits.

SPD at 75.

In support, plaintiff cites the Court to his deposition taken on November 23, 1984, in which he states that he had been experiencing headaches since early 1981, and that he took sick leave in March of 1982. Although he could have stayed on sick leave indefinitely, he returned to work on April 28, 1982, because he did not want personnel at J&L to be angry with him. Deposition of Melvin Forsythe, p. 28 (docket entry No. 22). When he returned to work on April 28, he was told that he was laid off. *Id.* at 30. According to plaintiff, the Committee totally ignored the Successive Periods of Disability provision of the Plan and based their decision solely on their interpretation of the Plan that LTD benefits end "on the last day worked by salaried employees."

Defendants contend that this section of the Plan is consistent with similar sections of the Plan concerning successive periods of absence for salary continuance benefits and accident plan benefits.[4] The purpose of these sections is to put a maximum on the amount of benefits available under the Plan to a given employee who experiences back-to-back disability periods by not restarting the clock on each new disability. Carroll affidavit, ¶4-¶5 (docket entry No. 30). This is necessary because the disability plan is structured to provide an employee who qualifies with 100 percent of his monthly base salary the first 26 weeks of his absence (salary continuance benefits), then 60 percent of his monthly base salary for the next 26 weeks of disability (sickness and accident benefits), and finally, 60 percent of his monthly base salary (long-term disability benefits). Thus, the purpose of the section dealing with successive periods of disability is to place a cap on benefits, not to extend benefit coverage beyond layoff.

Further, although plaintiff claims that he was disabled from headaches in March of 1982, plaintiff never made a claim for disability benefits for any alleged disability prior to the disability resulting from the May 19, 1982

[4] The section of the Plan dealing with Salary Continuance Benefits provides that an employee is eligible for his full benefit under this Plan for each period of absence whether from one or more causes, but two or more absences due to unrelated causes, not separated by a return work, are considered one continuous period of absence. SPD at 70-71. The section of the Plan dealing with Sickness and Accident Benefits provides that an employee is eligible for a combined maximum of 52 weeks of benefits for each period of disability, but if two periods of disability are unrelated in cause and not separated by one day of work, they will not be treated separately. SPD at 72-73.

auto accident. Plaintiff's own Statement of Claim form submitted to Metropolitan indicated that he was first disabled on May 19, 1982. Further, a physical examination performed in April of 1982, established no physical cause for plaintiff's ailments, while acknowledging that emotional problems, from which plaintiff suffered ten years previously, could be the cause of his problems. Report of Dr. William Bair (docket entry No. 22).

Therefore, based on the evidence before it, the Court does not find that the Committee acted arbitrarily and capriciously in determining that "there was not sufficient evidence that a disability existed prior to Mr. Forsythe's termination of employment." Exhibit 8. Based on the foregoing, plaintiff's motion for summary judgment is denied and defendants' motion for summary judgment is granted.

An appropriate Order will be issued.

ALAN N. BLOCH
United States District Judge

Date: July 17, 1985.
cc: Counsel of record.

Appendix A—Memorandum Opinion and Order of the United States District Court for the Western District of Pennsylvania dated July 17, 1985.

Received Jul 18 1985

IN THE
UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania

MELVIN K. FORSYTHE,

Plaintiff,

vs.

JONES & LAUGHLIN STEEL CORPORATION and PROGRAM OF GROUP BENEFITS OF SALARIED EMPLOYEES OF JONES & LAUGHLIN STEEL CORPORATION AND PARTICIPATING EMPLOYERS,

Defendants.

Civil Action No. 84-2233.

JUDGMENT ORDER

AND NOW, this 17th day of July, 1985, upon consideration of Plaintiff's Motion for Summary Judgment filed in the above captioned matter on March 15, 1985, IT IS HEREBY ORDERED that said Motion is DENIED.

AND, further, upon consideration of Defendants' Motion for Summary Judgment filed in the above captioned matter on February 22, 1985, IT IS HEREBY ORDERED that said Motion is GRANTED. The Clerk of Courts is directed to enter judgment in favor of the defendants and against the plaintiff.

ALAN N. BLOCH
United States District Judge

cc: George E. Loebig, Esquire
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APPENDIX B

Judgment Order of the United States Court of Appeals for the Third Circuit dated March 6, 1986.

Received Mar 12 1986

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 85-3407

MELVIN K. FORSYTHE,

Appellant,

v.

JONES & LAUGHLIN STEEL CORPORATION, PROGRAM OF GROUP BENEFITS OF SALARIED EMPLOYERS OF JONES & LAUGHLIN STEEL CORP. AND PARTICIPATING EMPLOYERS.

Appeal From the United States District Court
For the Western District of
Pennsylvania—Pittsburgh
D.C. 84-2233
District Judge: Honorable Alan N. Bloch

Argued February 14, 1986
Before: ADAMS, HUNTER, *Circuit Judges,* and
GILES,* *District Judge*

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* Honorable James T. Giles, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Appendix B—Judgment Order of the United States Court of Appeals for the Third Circuit dated March 6, 1986.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,
JAMES HUNTER, III,
Circuit Judge

Attest:
SALLY MRVOS
Clerk

Dated Mar 6 1986